

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
)	
The Proposed Extension of Part 4 of the)	PS Docket No. 11-82
Commission's Rules Regarding Outage)	
Reporting To Interconnected Voice Over)	
Internet Protocol Service Providers and)	
Broadband Internet Service Providers)	
)	

REPLY COMMENTS OF METROPCS COMMUNICATIONS, INC.

MetroPCS Communications, Inc. ("MetroPCS"),¹ by its attorneys, hereby respectfully submits its reply to the various comments submitted in response to the *Notice of Proposed Rulemaking* ("NPRM") released by the Federal Communications Commission (the "FCC" or "Commission") in the above-captioned proceeding.² For the reasons set forth in greater detail below, MetroPCS supports lengthening the initial outage reporting deadlines and opposes (1) the extension of outage reporting obligations to broadband Internet access services and (2) the adoption of additional procedures for reporting outage information to state entities. In reply, the following is respectfully shown:

¹ For purposes of these Comments, the term "MetroPCS" refers to MetroPCS Communications, Inc. and all of its FCC license holding subsidiaries.

² *The Proposed Extension of Part 4 of the Commission's Rules Regarding Outage Reporting To Interconnected Voice Over Internet Protocol Service Providers and Broadband Internet Service Providers*, Notice of Proposed Rulemaking, PS Docket No. 11-82 (rel. May 13, 2011) ("NPRM").

I. INTRODUCTION

MetroPCS generally supports the Commission's efforts to promote reliable and resilient communications systems and to protect critical infrastructure. However, for the reasons set forth in its initial comments and the comments of others,³ MetroPCS maintains its view that "extending the current network outage reporting requirements applicable to voice and paging services to broadband Internet access providers would be completely unnecessary and unwise."⁴ As noted previously by MetroPCS, there are significant reasons why the Commission should not extend its outage reporting rules.⁵ First of all, these services are currently in their nascent stage and reporting obligations would redirect substantial resources from ensuring that the network and services are resilient and operating properly to reporting on the outages. Further, the metrics for outage reporting would also be extremely complex and very dependent on the anticipated uses of the device.⁶ Lastly, the Commission also does not have the jurisdiction to extend the outage reporting rules to broadband networks.

³ See e.g., Comments of XO Communications, LLC; Comments of Vonage Holdings Corp.; Comments of Verizon and Verizon Wireless ("Verizon"); Comments of T-Mobile USA, Inc.; Comments of Sprint Nextel Corporation; Comments of MegaPath Inc. and Covad Communications Company; Comments of CenturyLink; Comments of CTIA; Comments of AT&T Inc.; Comments of VON Coalition; Comments of USTelecom; Comments of Time Warner Cable ("TWC"); Comments of Telecommunications Industry Association ("TIA"); Comments of National Cable & Telecommunications Association ("NCTA"); Comments of The Alliance for Telecommunications Industry Solutions ("ATIS").

⁴ Comments of MetroPCS Communications, Inc., ET Docket No. 04-35, WC Docket No. 05-271, GN Docket Nos. 09-47, 09-51, 09-137, 2 (filed August 2, 2010).

⁵ MetroPCS also continues to maintain, as stated previously, that the Commission does not have the jurisdiction to extend the outage reporting rules to broadband networks. See Comments of MetroPCS Communications, Inc. 13 – 20.

⁶ For example, jitter and delay may be perfectly acceptable when the service is used to deliver files or e-mail as in these situations, jitter and delay would cause substantial user problems for end users.

However, if the Commission nevertheless decides to extend the reporting requirements to these services, MetroPCS urges the Commission to: (1) lengthen the reporting deadlines, particularly the initial deadline; and (2) continue to treat the reported information as presumptively confidential without allowing state entities access to the data.

Any proposed rules adopted by the Commission should prioritize the restoration of service to the public rather than the reporting of the outage. Lengthening the initial reporting timeline will allow service providers to dedicate their undivided attention to resolving the cause of the outage. Once service has been restored, the carrier can prepare a thorough and accurate report for the Commission. This change is particularly important since data networks operate differently than voice networks and the cause of some degradations of service may not be as clearly identifiable, which can lead to inaccurate reporting, or over-reporting, under strict time constraints. In addition, since the issue ultimately is to ensure that service is restored as quickly as possible, all resources should be dedicated to service restoration, instead of reporting. Further, as the reporting of outages will not lead to quicker restoration of a networks services, it is not critical that the outage be reported until it has been resolved. The Commission also should resist the call by some states to provide certain state entities with access to outage information. Requiring carriers to report any outage information concurrently to state entities in addition to the FCC would further burden providers, and create additional opportunities for disclosure of such critically sensitive information.

II. OUTAGE REPORTING DEADLINES SHOULD BE LENGTHENED TO ALLOW CARRIERS TO PRIORITIZE RESTORATION

Although MetroPCS remains opposed to any extension of the current network outage reporting requirements to Voice over Internet Protocol (“VoIP”) providers and broadband Internet service providers (“ISPs”), if the requirements are nonetheless extended to such

providers, MetroPCS agrees with those commenters urging the Commission to lengthen the initial reporting deadline so that carriers are encouraged to report the outage after the problem has been resolved.⁷

The Commission proposes to extend its Part 4 rules to require communications providers to submit a notification within *two hours* of discovering a reportable outage, and submit a further report within 72 hours after outage discovery.⁸ MetroPCS urges the Commission to recognize the prospect that this reporting obligation, particularly the two hour report, risks disrupting the restoration due to the nature of data networks. Under the proposed rule, once the interconnected VoIP provider or broadband ISP recognizes that an outage has occurred, it must not only work diligently to restore service, but also must ensure that its report contains a variety of information, including: “[t]he name of the reporting entity; the date and time of onset of the outage; a brief description of the problem; service effects; the geographic area affected by the outage; and a contact name and contact telephone number”⁹ MetroPCS has firsthand experience on how the current reporting requirements can disrupt efforts to resolve outages, can lead to reports which may initially find that the outage is the result of issues that ultimately differ from the root cause of the problem and may at times result in over- reporting (and subsequent withdrawals). Indeed, in most circumstances, the time that a provider has the best information on the problem and its effects is when the outage has been resolved. For these reasons, MetroPCS believes the

⁷ Comments of VON Coalition, 8; Comments of T-Mobile, 10; Comments of NCTA, 8; Comments of Comcast Corporation, 3 – 4; Comments of Verizon, 14; Comments of AT&T, 19 – 22.

⁸ See 47 C.F.R. §§ 4.9, 4.11.

⁹ 47 C.F.R. § 4.11.

better course (and the one more likely to lead to the outage information the Commission is seeking) is to have outage reports due only after the outage has been resolved.

One knowledgeable commenter has emphasized that this required information cannot be automated.¹⁰ The unique architecture of interconnected VoIP and broadband networks creates further difficulties and potential delays in completing the outage report.¹¹ As the rules currently stand, requiring interconnected VoIP providers or broadband ISPs to submit a notification within two hours of a discovered outage not only has the possibility of prolonging the outage due to the nature of the requested information, but it also distracts providers from what should be their number one priority – solving the problem. As discussed in the initial MetroPCS comments,¹² data networks by their nature make it difficult to ascertain where a problem originates, let alone craft a solution. The time and resources that would be necessary to compile this information in the first two hours after an outage discovery would be better directed towards restoration instead.

Lengthening the initial reporting deadline will allow telecommunications carriers to assess and resolve the problem, and, in the long-term, may produce better information that can help prevent similar outages in the future. Short deadlines and the penalties associated with insufficient and late filings may actually create incentives to file what proves to be an incomplete report, rather than providing sufficient time for the provider to file an accurate, useful set of information concerning service outages.¹³ For example, the VON Coalition suggests that the

¹⁰ Comments of VON Coalition, 10.

¹¹ *Id.* (stating that “[w]ith a decentralized system operating over the Internet, the extent of an outage may be difficult to determine and impossible to localize.”).

¹² Comments of MetroPCS Communications, Inc.

¹³ *In the Matter of Alpheus Communications LP*, Notice of Apparent Liability for Forfeiture, File No. EB-09-SE-126, NAL/Acct. No. 201032100033, FRN No. 0005004361 (*footnote continued*)

“Notification and Initial and Final Reports should not include information that cannot be readily obtained due to the nature of [interconnected VoIP]. . . . and should be due no earlier than five days” after the discovered outage.¹⁴ MetroPCS urges the Commission to recognize the importance of restoration over reporting and adopt the VON Coalition proposal to lengthen the initial reporting deadline and thereby improve the prospects that the necessary information will be obtainable for interconnected VoIP providers and broadband ISPs.

III. THE COMMISSION SHOULD NOT ADOPT ADDITIONAL PROCEDURES THAT WOULD REQUIRE CARRIERS TO SUBMIT OUTAGE INFORMATION TO STATE ENTITIES

The Commission should not impose supplementary reporting requirements for the benefit of state government entities. The Commission has properly recognized the importance of treating collected outage information as confidential and that policy should be applied to the information collected from interconnected VoIP service providers and broadband ISPs as well.¹⁵ There is overwhelming support in the record for maintaining confidential treatment for Part 4 rules, and the Commission should continue this treatment without granting state access.¹⁶ The Commission should not be swayed from this prudent policy by those commenters who want certain state entities to be given access to information,¹⁷ because even though this sharing would

(rel. July 6, 2010) (imposing a penalty of \$60,000 on the wireline carrier for violating the Part 4 outage reporting requirements).

¹⁴ Comments of VON Coalition, 11.

¹⁵ *NPRM* ¶ 66; *see* 47 C.F.R. § 4.2.

¹⁶ Comments of T-Mobile, 12; Comments of CenturyLink, 22 – 24; Comments of AT&T, 22; Comments of TWC, 6; Comments of TIA, 11 – 12; Comments of ATIS, 19; Comments of Wireless Internet Service Providers Association, 7.

¹⁷ Comments of the New York State Public Service Commission, 7 - 9; Comments of the Massachusetts Department of Telecommunications and Cable, 8 – 9; Comments of the Michigan Public Service Commission 3 – 4.

be on a presumptively confidential basis, the risk of breaches of confidentiality clearly increases when there is intergovernmental sharing of outage data. Furthermore, bringing additional parties into the outage regime will add additional requirements for carriers to fulfill in an already burdensome process. Indeed, depending upon the manner in which information is to be provided to state entities, carriers may be further distracted from focusing on the ultimate goal of system restoration through the imposition of additional reporting. In addition, unlike voice services currently subject to the rules, interconnected VoIP providers and ISPs are not generally subject to state regulation, and thus state regulatory agencies do not have a significant regulatory purpose for this outage information.

In evaluating this information sharing proposal, the Commission should consider the possible risks to critical information infrastructure that may result from the unintentional or malicious disclosure of this shared data. Possible disclosure exists as a threat to national security, as well as to the competitive robust marketplace of the industry. The Commission previously has recognized that outage reports “could be used by hostile parties to attack those networks, which are part of our Nation’s critical infrastructure.”¹⁸ Moreover, the Commission also has concluded that “[g]iven the competitive nature of many segments of the communications industry and the importance that outage information may have on the selection of a service provider or manufacturer. . . there is a presumptive likelihood of substantial competitive harm from disclosure of information in outage reports.”¹⁹ Providing multiple parties (usually, with varying interests) access to this information, will only increase the chances of disclosure. Indeed, once states gain control of this data, they may offer less protection to this

¹⁸ *New Part 4 of the Commission’s Rules Concerning Disruptions to Communications*, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 16830, ¶ 40 (2004).

¹⁹ *Id.* ¶ 45.

information than is afforded at the federal level. For example, certain state public utility commissions may “not automatically designate state outage reports as confidential and require carriers to request confidential treatment for each report”- a request that may not be granted.²⁰

While spending time complying with various states’ procedures for submitting such reports, it will further distract the provider from focusing its efforts on restoration. Even with lengthened reporting timeframes, it will still be burdensome for the provider to have to supply various reports to both states and the FCC. Therefore, in order to ensure that restoration is without delay, and to further ensure that the confidential integrity of the outage reports are maintained, the Commission must not adopt additional procedures to require carriers to submit outage information to additional state government entities.

IV. CONCLUSION

It is evident from the record that the overwhelming majority of industry participants and stakeholders oppose any extension of Part 4 outage reporting requirements to interconnected VoIP and broadband networks. Despite such opposition, these commenters also took this opportunity to emphasize the importance of maintaining the proper focus and priorities when an outage occurs. Restoration should be the first priority after a discovered outage; and reporting, second. As the rules currently stand, reporting is incorrectly portrayed as being the top priority after an outage, due to the imposition of associated penalties for the failure to file. Lengthening outage reporting deadlines to a more realistic timeframe for interconnected VoIP providers and broadband ISPs will allow for more thorough reporting, and will remove distractions that cause delays in resolving such outages. Moreover, by increasing reporting burdens on providers

²⁰ Reply Comments of Verizon and Verizon Wireless, ET Docket No. 04-35, RM-11588, 3 (filed Mar. 19, 2010). It is also not clear how this process would work since state regulatory agencies would essentially be collecting information on services that they lack jurisdiction to regulate.

through additional reporting to state entities, as some commenters suggest, the Commission will only devalue the importance of restoration, and increase demands on the already burdensome process. Therefore, the Commission should not permit state entities access to this information due to the unnecessary burdens that will result. Furthermore, by allowing additional participants to receive this information, it will increase the opportunity for unintentional or malicious disclosure of this data, which will threaten national security and the communications industry as whole.

Respectfully submitted,

MetroPCS Communications, Inc.



By:

Carl W. Northrop

Michael Lazarus

Jessica DeSimone

TELECOMMUNICATIONS LAW

PROFESSIONALS PLLC

875 15th Street, NW, Suite 750

Washington, DC 20005

Telephone: (202) 789-3120

Facsimile: (202) 789-3112

Mark A. Stachiw

General Counsel, Vice Chairman

& Secretary

MetroPCS Communications, Inc.

2250 Lakeside Blvd.

Richardson, Texas 75082

Telephone: (214) 570-5800

Facsimile: (866) 685-9618

Its Attorneys

October 7, 2011